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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/716,208	11/18/2003	Theresa N. Powless	1791-000001	4843

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EXAMINER

NGUYEN, SON T

ART UNIT PAPER NUMBER

3643

DATE MAILED: 05/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/716,208

Applicant(s)

POWLESS, THERESA N.

Examiner

Son T. Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 18 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

*Ant*  
*Prim Exm 3643*

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Information Disclosure Statement*

1. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

### *Claim Rejections - 35 USC § 112*

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. **Claims 1-14** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Regarding claims 1 & 6, the phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d). Also in claim 1, line 8, "the upper edge portion" lacks prior antecedent basis. Claim 4, line 2, "the stem" lacks prior antecedent basis. Note, Applicant is encourage to re-check other claims for similar errors.

### *Claim Rejections - 35 USC § 103*

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. **Claims 1-14** are rejected under 35 U.S.C. 103(a) as being unpatentable over US 3273841 (herein 841) in view of US 2513461 (herein 461).

For claim 1, 841 discloses a method for prevent tipping of a flower pot 16 formed of an open top container having a vertical wall and a closed bottom, the method comprising providing a retainer 18,17,11,13,14 in the form of the shape of a vertically elongated stiff sheet stock with its upper end 35 or 30 bent downwardly to form a downwardly opening hook portion; and engaging the hook portion 30 or 35 over an upper edge portion 33 of the pot with the sheet stock extending downwardly from the hook portion closely adjacent to the pot wall and into the ground a sufficient distance to hold the pot against tipping. However, 841 is silent about the sheet stock being a wire rod, thus allow bending into a hairpin-like formation.

461 teaches a method for prevent tipping of a flower pot in which 461 employs wire rod with its upper end bent downwardly into a hairpin-like formation. It would have been an obvious substitution of functional equivalent to substitute a wire rod material as taught by 461 in place of the sheet stock material of 841, since both types of material would perform to prevent the pot from tipping.

For claim 2, in addition to the above, 461 further teaches springy wire material (see fig. 3). It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ springy wire material as further taught by 461 in

place of the material of 841 as modified by 461 in order to allow adjustability for different size pots.

For claim 3, in addition to the above, 461 further teaches more than one similar retainers 6. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ more than one similar retainers as further taught by 461 in the method of 841 as modified by 461, depending on the condition of the lateral forces.

For claim 4, 841 as modified by 461 (emphasis on 841) discloses wherein the pot has a downwardly tapered wall, and including arranging the stem 18 closely adjacent to the side wall of the pot, at an angle corresponding to the angle of the pot wall (see fig. 1).

For claim 5, 841 as modified by 461 (emphasis on 841) discloses the hook portion 30 or 35 including an elongated free leg. However, 841 as modified by 461 is silent about pushing the leg into potting material contained in the pot when engaging the hook portion over the upper edge portion of the pot. Note, in fig. 1 of 841, the hook portion is pushed into the pot but it is uncertain how far due to unknown amount of potting material in the pot. It would have been obvious to one having ordinary skill in the art at the time the invention was made to include pushing the leg into potting material contained in the pot when engaging the hook portion over the upper edge portion of the pot in the method of 841 as modified by 461, depending on the amount of potting material in the pot to fill up to the rim in order to allow this "pushing" step, and depending on if one wishes to further stabilize the retainer in the pot or not.

For claim 6, 841 discloses a retainer 18,17,11,13,14 for prevent tipping of a flower pot 16 formed of an open top container having a vertical wall and a closed bottom, the retainer comprising an elongated sheet stock material 18,11,14 and being of a length greater than the height of the pot ;the sheet stock having an upper portion 35 or 30 reversely bent into a downwardly opening hook; and the sheet stock having a lower stem portion 14 of sufficient length for extending into the ground. However, 841 is silent about the sheet stock being a stiff wire-like rod material.

461 teaches a retainer for prevent tipping of a flower pot in which 461 employs wire rod with its upper end bent downwardly into a hairpin-like formation. It would have been an obvious substitution of functional equivalent to substitute a wire rod material as taught by 461 in place of the sheet stock material of 841, since both types of material would perform to prevent the pot from tipping.

For claims 7 & 9, in addition to the above, 461 further teaches springy wire material (see fig. 3). It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ springy wire material as further taught by 461 in place of the material of 841 as modified by 461 in order to allow adjustability for different size pots.

For claim 8, 841 as modified by 461 (emphasis on 841) discloses the pot is formed with an upper rim having an outwardly extending band encircling the upper rim, and said retainer stem having a lower straight portion 18 and an upper end portion 28,29,30,23,22 bent outwardly of the lower stem portion for fitting around and receiving

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the adjacent portion of the pot band (the adjacent portion is the rim where ref. 33 is pointing at and also, area of ref. 22 receives a portion of the band).

For claim 10, 841 as modified by 461 (emphasis on 841) discloses the stem lower portion 14 terminating in an end shaped to penetrate the ground.

For claims 11 & 14, 841 as modified by 461 (emphasis on 841) discloses the hook portion 30 or 35 including an elongated free leg. However, 841 as modified by 461 is silent about pushing the leg into potting material contained in the pot when engaging the hook portion over the upper edge portion of the pot. Note, in fig. 1 of 841, the hook portion is pushed into the pot but it is uncertain how far due to unknown amount of potting material in the pot. It would have been obvious to one having ordinary skill in the art at the time the invention was made to include pushing the leg into potting material contained in the pot when engaging the hook portion over the upper edge portion of the pot of 841 as modified by 461, depending on the amount of potting material in the pot to fill up to the rim in order to allow this "pushing" step, and depending on if one wishes to further stabilize the retainer in the pot or not.

For claim 12, 841 as modified by 461 (emphasis on 841) discloses said hook being formed by leg portions 28,29,30 that extend downwardly and toward each other to provide a space for receiving an edge portion of the pot. The wire material is as discussed above.

For claim 13, see above.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son T. Nguyen whose telephone number is (703) 305-

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0765. The examiner can normally be reached on Monday - Friday from 9:00 a.m. to 5:00 p.m. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon, can be reached at (703) 308-2574. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to Customer Service at (703) 872-9325. The official fax number is 703-872-9306.



Son T. Nguyen  
Primary Examiner, GAU 3643  
May 14, 2004